



County of Los Angeles  
**CHIEF EXECUTIVE OFFICE**

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WILLIAM T FUJIOKA  
Chief Executive Officer

January 22, 2010

**REVISED**

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To: Supervisor Gloria Molina, Chair  
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Supervisor Zev Yaroslavsky  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: William T Fujioka  
Chief Executive Officer

**OPENING OF THE NEW MARTIN LUTHER KING, JR. HOSPITAL  
(AGENDA OF FEBRUARY 9, 2010)**

On December 1, 2009, your Board authorized the Chief Executive Officer (CEO) to establish a project management team to oversee all implementation aspects of the project and return to the Board in 30 days with a cost proposal. This memorandum provides the cost proposal and also reports on the establishment of the non-profit Board, information regarding the major project phases, and action items for your Board's approval.

Your Board also requested this Office to provide projected budgets for the establishment and implementation of the organizational structure required to operate the private non-profit entity, and any construction related costs associated with the demolition, preparation, construction, and occupancy of the new hospital and Multi-Service Ambulatory Care Center facilities; and actual expenditures, both anticipated and unanticipated, associated with all aspects of the projects. This request will be addressed separately.

**ESTABLISHMENT OF NON-PROFIT**

The new Martin Luther King, Jr., Hospital (MLK Hospital) will be a private non-profit hospital that will be established under a unique partnership with the University of California (UC). A project of this magnitude represents a significant undertaking and will require a dedicated team. The team must address numerous tasks, including, as outlined below, creating implementing agreements with the UC, and, most significantly, taking the actions required to establish the non-profit entity ("HospitalCo").

*"To Enrich Lives Through Effective And Caring Service"*

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The steps, procedures, and issues associated with the non-profit establishment are described in the HospitalCo Implementation Steps and Procedures, Attachment I. A timeline for establishing the non-profit is also provided in Attachment II. The appointment of a seven member board represents a mutual commitment between the County and the UC under the key elements approved by the UC Board of Regents and your Board. The proposed process is for the County to develop standards and procedures for appointing Board members, including: outreach strategies for identifying candidates; establishment of a rating process for the CEO to act as the County's nominating representative and final determiner of Board member selection; and appointment of selected members.

## **PROJECT PHASES**

In addition to the establishment of a non-profit and its Board, there are several other critical project tasks associated with the opening of the new MLK Hospital. We have summarized key items into the following four major project phases.

- **Phase I: Memorandum of Understanding (MOU)** – develop the Implementing MOU between the County and University of California (UC).
- **Phase II: Non-Profit Start-Up** – establish the non-profit and assist with its start-up (create and file articles of incorporation, develop mission statement and bylaws, establish appointing process, create the board, identify interim executive director, provide start-up funding).
- **Phase III: Capital Program** – coordinate/liaison with the capital project team on the clinical foot print planning, pre-construction design, to ensure that Office of Statewide Health Planning and Development requirements and deadlines are met.
- **Phase IV: Facility/Program Development** – develop the following agreements:
  - a. County/State – Intergovernmental Transfer (IGT) for Medi-Cal payment to non-profit;
  - b. County/Non-Profit – Transfer of license, facility use, indigent care services, and overall service integration;
  - c. Non-Profit/State – California Medical Assistance Commission/Medi-Cal; and
  - d. Non-Profit/UC – Physician services and training.

## PROJECT TEAM AND COSTS

The composition of the project team includes the members described below at an initial estimated annual cost of \$0.9 million. Part of the duties and responsibilities of the Project Director will include the preparation and oversight of an annual budget for the project team. It is anticipated that the team will be in place for approximately three years.

Team Member	Overall Responsibility
Project Director	Oversee implementation of the project.
Assistant Project Director	Assist the project director in the implementation of the project.
Staff (3)	Conduct implementation of the key items noted above.
Support	Finance, legal counsel, program/clinical, communications, and secretarial – support staff will provide assistance on an as needed basis and may include County staff, UC support staff, and/or outside consultants.  Also includes, incidental expenses (space, equipment, etc.)

## TIMELINE

As noted in previous reports to your Board, the opening of the new MLK Hospital is targeted for late 2012. In order to meet this deadline, a very ambitious project timeline will be developed by the project team to ensure the five noted phases are completed by the target date.

## ACTION ITEMS

The following actions are presented to your Board for approval.

1. Instruct the CEO to identify funding, at an estimated annual cost of \$0.9 million, for the establishment of the project management team to oversee implementation of the five major project phases described above.
2. Instruct the CEO to work with the UC to develop standards and procedures for appointing the non-profit Board members and establish non-profit Board criteria.
3. Delegate authority to the CEO to identify the County's non-profit Board members in accordance with the established criteria.

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Please contact me if you have any questions or your staff may contact Sheila Shima,  
Deputy Chief Executive Officer, at (213) 974-1160.

WTF:SAS  
MLM:gl

Attachments

c: Executive Office, Board of Supervisors  
County Counsel  
Department of Health Services

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**HOSPITALCO IMPLEMENTATION STEPS AND PROCEDURES**

I. IDENTIFICATION AND SELECTION OF BOARD MEMBERS/  
ESTABLISHMENT OF NONPROFIT BOARD

Seven member Board

Members appointed by the County and University of California (UC)  
as follows:

Two members appointed by County on a permanent basis

Two members appointed by UC on a permanent basis

Mutual appointment of remaining three members

No Board seat is to be filled by County or UC officers (or  
employees).

Board of Director qualifications include ten or more years of  
demonstrated experience in health care, business, and/or law  
(preferably in California and the Los Angeles area).

II. NONPROFIT BOARD IDENTIFICATION AND SELECTION PROCESS

Develop standards and procedures for appointing Board members to  
include the following basic steps:

Identify outreach strategies for identifying candidates

Establish interview committee/individual to rate candidates

CEO, as County's nominating representative, to identify Nonprofit  
Board member candidates

Appoint selected persons to be Board members

III. NONPROFIT INCORPORATION STEPS AND ISSUES, INCLUDING  
FILING ARTICLES OF INCORPORATION AND FOR NONPROFIT  
STATUS, BYLAWS, POLICIES, ETC.

## Nonprofit Establishment Steps (cont.)

### Overview

Creating a nonprofit corporation (the State recognizes three types of nonprofit corporations: Religious, Public Benefit, and Mutual Benefit) begins with a fairly straightforward process of filing a form – the Articles of Incorporation – with the Secretary of State (SOS). The form is one page and requires minimal information. Additional information may be added to the form; it is not limited to one page. As discussed below, it is important that the Articles contain appropriate language to allow the non-profit to qualify as a tax exempt, 501(c)(3) corporation under federal tax law.

The SOS will endorse the corporation effective the date of receipt of the form.

Next, the SOS requires a Statement of Information to be filed within 90 days of filing the Articles of Incorporation. The Statement of Information requires more specific information such as names of the corporation's CEO, Secretary, and CFO.

The next step, **which can take place at any time**, is the drafting of bylaws. The bylaws may be adopted by the incorporators or by the Board at the first Board meeting. The bylaws are the everyday working charter for the corporation which establishes its structure and requires extensive drafting.

The Articles of Incorporation and the bylaws form the corporate charter.

Filing for 501(c)(3) tax exempt status with the IRS must be completed within 27 months of the endorsed Articles of Incorporation. The IRS requires copies of the corporation's Articles and the bylaws, among other documents. The IRS will review the corporate purpose as stated on the Articles, as well as other statements in the application, to determine 501(c)(3) tax exempt status. The IRS deems the Articles to be a pivotal determinant when determining tax exempt status, as it is the Articles that form the corporation.

It is imperative that the original purpose of the corporation, as filed on the Articles of Incorporation, meet the criteria required by the IRS for 501(c)(3) tax exempt status. In fact, all documents that are required to be sent to the IRS should align with the IRS' requirement of being "...organized and operated exclusively for a...charitable ...purpose...".

State tax exempt filing requires filing form FTB 3500.

### Steps

## Nonprofit Establishment Steps (cont.)

### Articles of Incorporation Filing (State)

Corporation's existence begins upon filing the Articles of Incorporation.

The Articles of Incorporation form requires the following minimal information:

- 1) corporate name
- 2) corporate purpose
- 3) corporation's agent for service of process
- 4) incorporator's name(s) and signature(s)

Directors, Officers, etc. are not required on the form. Incorporator may sign form and file.

#### Statement of Corporate Purpose:

It is imperative that the Corporate Purpose as stated on the State form meet federal requirements. With regard to IRS charitable purpose tax exemption, the IRS will look at the State-endorsed Articles of Incorporation, as well as the bylaws and other corporate documents, to verify that the corporation meets the "charitable purpose" criteria of IRS section 501(c)(3). All corporate documents must be consistent with each other.

The sample form provided by the SOS includes some specific wording that is required by the IRS for charitable purpose exemption. However, when completing the "Purpose" section, the purpose should include specific wording that (HospitalCo Nonprofit Corporation) provides health care services **"for charitable purposes within the meaning of 501(c)(3)"** and language such as "...serving the indigent/Medi-Cal, charity population..." and/or "...the safety net for first-rate health care..." and/or "...high volume Medi-Cal and uninsured. ." and/or "...through hospital inpatient and emergency health care services for the indigent and needy population of South Los Angeles...", etc.

SOS will endorse the Articles, send one copy to the Attorney General, (and one copy to the Controller, if corporation was created by an elected legislative body Code section 5120(e)\*, and send copies to corporation.

The Articles may limit the purposes or powers of the corporation with a further statement. Also, the Articles may provide that any

## Nonprofit Establishment Steps (cont.)

amendment to the Articles or bylaws shall be approved in writing by a specified person(s) other than the corporation's Board or members. Code section 5132(c)(4) If the County and UC wanted to ensure that amendments to the Articles and/or bylaws were required to first be approved by them, they must so provide in the Articles.

- \* **NOTE:** "Code sections" referred to in this document are references to the California Corporations Code, unless otherwise noted.

The Articles may be amended after endorsed by the SOS. Any change to the originally filed Articles, including changes to the Purpose, requires formal amendments. The form, "Restated Articles of Incorporation", must be filed with the SOS (one endorsed copy is forwarded by the SOS to the AG). Generally, an amendment must be approved by the corporate Board, and others, if required. If no Board has been named in the original filing or elected at the time of the amendment, and the corporation has no members, a majority of the incorporators may approve the amendment. Code section 5811

Amendments to the Articles are effective on the date of filing with the SOS, which is the date received by the SOS.

## Statement of Information filing (State)

The Statement of Information is required from the nonprofit, public benefit corporation by the SOS 90 days after filing the Articles and every two years thereafter.

If the 90 day deadline is missed, an extension (delinquency period) of 60 days is granted. If the extension date is missed, a penalty is assessed by the State Franchise Tax Board (FTB).

A partially completed (Corporation Name) Statement of Information form is sent to the corporation by the SOS for completion.

Required information includes names of corporate CEO, CFO, and Secretary. The CEO must be a different person from the CFO and Secretary. The Secretary and CFO may be the same person. Code section 5213(a)

The SOS will endorse the Statement of Information and file one copy. Certified copies are available.

## Nonprofit Establishment Steps (cont.)

A revised Statement of Information may be sent to the SOS at any time and will supersede all previous Statements of Information.

### Tax Exempt Status Filing

#### Federal 501(c)(3) Filing

Within 27 months from the date of incorporation, the date the Articles of Corporation were received, a corporation seeking 501(c)(3) tax exempt status must file for such status to be effective from the date of incorporation. If filed after that date, the tax exempt status is retroactive to the date of application.

Filing for federal 501(c)(3) tax exemption status requires completion of IRS form 1023, which is 26 pages long. The IRS requires the tax exempt application, which includes documents in addition to the completed form, to be sent in the following order:

- Form 1023 Checklist
- Form 2848, *Power of Attorney and Declaration of Representative* (if filing)
- Form 8821, *Tax Information Authorization* (if filing)
- Expedite request (if requesting)

- Application (Form 1023 and Schedules A through H, as required)

- Articles of organization

- Amendments to articles of organization in chronological order

- Bylaws or other rules of operation and amendments

- Documentation of nondiscriminatory policy for schools, as required by Schedule B

- Form 5768, *Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation* (if filing)

- All other attachments, including explanations, financial data, and printed materials or publications.

The IRS cautions the following:

Specific details about past, present, and planned activities must be provided.

## Nonprofit Establishment Steps (cont.)

Generalizations or failure to answer questions in the Form 1023 application will prevent tax exempt recognition by the IRS.

Purposes and proposed activities must be described in specific easily understood terms.

Financial information should correspond with proposed activities.

### State FTB 3500 filing

The exemption application (FTB form 3500), the endorsed copy of the Articles of Incorporation, and additional required supporting information must be sent to the FTB for a tax exempt status determination. Until such determination is made, a nonprofit corporation is subject to a California franchise tax minimum of \$800, annually. (Cal. Rev. and Tax Code section 23701(d).

## IV. COUNTY NONPROFIT STARTUP PROJECT TEAM TASKS

Draft bylaws for Nonprofit (adoption at first Board meeting, or by incorporators prior to first meeting)

While not required to be filed with the SOS, State law requires that the bylaws follow certain protocols and contain certain elements.

Code sections 5150-5153 cover nonprofit public benefit corporation bylaws and are summarized as follows:

Generally, bylaws may be adopted, amended or repealed by the Board of Directors and/or the members. However, the bylaws may restrict or eliminate the power of the Board to adopt, amend or repeal the bylaws, subject to a majority vote of the Directors and/or members. Code section 5151(c)

A corporation may have no members. Code section 5310

The bylaws shall include the number of Directors on the Board. However, the number may be one that is between a fixed minimum and a fixed maximum, such as between seven (7) and eleven (11). If members have been admitted to the corporation, the number of Directors that are originally adopted into the bylaws shall only be changed by approval of the members. (If it were anticipated that the HospitalCo Board may change a provision allowing that modification

## Nonprofit Establishment Steps (cont.)

would need to be in the bylaws when adopted. If not, then an amendment would be needed. That amendment could or could not require (pre)approval of other person(s) – County/UC.)

The bylaws may include any or all of the following:

- (1) Articles of Incorporation discretionary items, e.g., names and addresses of provisional directors.
- (2) The time, place and manner of calling, conducting and giving notice of members', directors and committee meetings, or of conducting mail ballots.
- (3) The qualifications, duties and compensation of directors; the time of their election; and the requirements of a quorum for directors and committee meetings.
- (4) The appointment and authority of committees.
- (5) The appointment, duties, compensation and tenure of officers.
- (6) The mode of determination of members of record.
- (7) The making of reports and financial statements to members.
- (8) Setting, imposing and collecting dues, assessments and admission fees.

The manner of admission, withdrawal, suspension, and expulsion of members, consistent with the requirements of Code section 5341.

The bylaws may require, for any or all corporate actions, the vote of a larger proportion of directors or members than is otherwise required by this part – supermajority. Such a provision in the bylaws requiring such greater vote cannot be altered, amended or repealed except by such greater vote, unless otherwise provided in the bylaws. Code sections 5151(c)(d)(e) For example, the Coordination Agreement provides that HospitalCo may access reserve funds only upon the vote of a supermajority of the Board.

## Nonprofit Establishment Steps (cont.)

**Much of the business of the corporation may be completed by the incorporators prior to naming directors. All of "First Meeting" tasks below may be conducted by the incorporators, in furtherance of perfecting the organization of the HospitalCo.**

Bylaws must include provisions for policies, procedures, and manuals for core functions pursuant to HospitalCo licensing, and at a minimum include providing for management and staff, setting policy, maintaining licensure, accreditation, certification, and other regulatory approvals.

Bylaws must also include a provision for maintaining a reserve amount of ten percent (10%) of operating expenses, on a phased-in basis.

### Prepare for First Meeting/Convene First Meeting

While the County must retain an arm's length relationship with HospitalCo, until HospitalCo has met, hired counsel, hired and appointed officers, formed committees, adopted policies and procedures, the nonprofit start-up project team may be required to provide specific tasks in preparation for the first meeting, such as:

Prepare bylaws for adoption.

Identify/list officers for election/adoption.

Prepare list of committees and potential members.

Accept donations (foundation funding, equipment, etc.).

Adopt corporate seal.

Create Records Book.

Corporations are required to keep adequate and correct books and records of account, minutes, and a record of its members. Code section 6320 Such records are to be kept in legible, or easily converted to legible, writing and are admissible in evidence.

Secure Fed Employer Id No. (EIN)/State (EDD)

## Nonprofit Establishment Steps (cont.)

Corporation must apply for federal and State employer identification numbers to be able to hire employees. Both federal and State employer ID numbers may be applied for online.

Assist with facility program development; for example, staff startup, licensing and surveys, etc.

Identify needed provisions for contracts between County and Nonprofit; develop framework for agreements between County and HospitalCo, to include:

Indigent Care - \$13.3 million

Startup fund - \$10.0 million per year, for five years (after agreement is signed)

Reserve fund of \$8.0 million (on fifth anniversary of agreement) and access to maximum of \$20 million for exigent circumstances.

IGT - \$50 million

Lease Agreement

Tripartite agreement with UC/County

Liability and medical malpractice issues

## V. DEFINITIONS

**Designated Powers** – those powers designated specifically to a member(s) or individual(s) in the Articles/bylaws of the nonprofit. Contemplated designated powers include the right of the County and UC to appoint Board members and the right to approve seminal changes.

**Incorporators** – by signing the articles of incorporation and filing the articles with the SOS, those signing the articles become “incorporators”. Code section 5120

**Members** – any person who, pursuant to a specific provision of a corporation's articles or bylaws, has the right to vote for the election of a director or directors or on a disposition of all or substantially all of the assets of a corporation or on a merger or on a dissolution; also any person who is designated in the articles or bylaws as a member and, pursuant to a specific provision of a corporation's articles or bylaws, has the right to vote on changes to the articles or bylaws. A member does not have to be a natural person. Code section 5056

## Nonprofit Establishment Steps (cont.)

A "member" of a nonprofit corporation is not liable for the corporation's debts, liabilities, or obligations (unless the member so dominates the corporation as to render it the member's alter ego. Code section 5350

Members must be provided for in the articles or bylaws. Without such provisions, the corporation has no members. Code section 5310

Seminal Changes – those corporate changes which are significant, e.g., sale of the majority of assets, mergers, expensive acquisitions, use of the prudent reserve, etc., and specifically identified in the Articles/bylaws.

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